



ARKANSAS JUDICIARY

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Rule 68. Offer Of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. For purposes of this rule, the term "costs" is defined as reasonable litigation expenses, excluding attorney's fees.

Reporter's Notes to Rule 68: - 1. With the exception of one minor change, Rule 68 is otherwise identical to FRCP 68. This change simply provides for the entry of judgment where an offer of judgment has been accepted as opposed to the provision found in FRCP 68 which authorizes the clerk to enter judgment. This rule is not concerned with the mechanics of preparing and entering the judgment and resort to Rule 58 is necessary to find the procedure for preparing and entering judgment.

2. This rule is substantially the same as superseded Ark. Stat. Ann. 27-1501, et seq. (Repl. 1962). It does, however, follow the provision of FRCP 68 concerning the time for accepting an offer of settlement. Thus, a party is given ten days to accept such an offer as opposed to the five day period allowed under prior Arkansas law. The purpose behind this rule and FRCP 68 is to encourage the early settlement of claims and to protect the party who is willing to settle from the expense and burden of costs which subsequently accrue. *Staffend v. Lake Cent. Airlines, Inc.*, 47 F.R.D. 218 (D.C., Ohio, 1969).

Addition to Reporter's Notes, 1988 Amendment: - The amendment broadens the definition of the term "costs" for purposes of this rule. In *Darragh Poultry & Livestock Equip. Co. v. Piney Creek Sales, Inc.*, 294 Ark. 427, 743 S.W.2d 804 (1988), the Supreme Court held that, as used in this rule, the term "costs" is limited to costs authorized by statute, a result consistent with prior cases adopting a narrow definition of the term in other contexts. However, a broader approach is warranted with respect to this rule, which is designed to encourage early

settlement. The amended rule thus permits assessment of not only those costs authorized by statute, but also reasonable expenses typically incurred in the course of litigation. As a result, expenses disallowed under Darragh - e.g., meals and lodging - are now available under the amended rule. Attorney's fees, however, are expressly excluded from the new definition.

History Text:

History. Amended November 21, 1988, effective January 1, 1989

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VIII. Counsel; Provisional and Final Remedies; Suits in Forma Pauperis

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